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No. _____

Supreme Court, U.S.

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IN THE

Supreme Court of the United States

October Term, 1987

HONEYWELL, INC. and ECLIPSE, INC.,
Petitioners,

vs.

BETTY JANE LUZADDER, Executrix of the Estate
of DAVID P. LUZADDER, Deceased; and
DESPATCH OVEN COMPANY,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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i.

Question Presented for Review

Whether, in a diversity case, the United States Court of Appeals for the Third Circuit is absolutely bound by decisions of intermediate state appellate courts when the State Supreme Court has not directly addressed the legal questions at issue?



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Other Authority:

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Statement of the Case

The decision by the District Court, on the summary judgment motion, predicted that the Pennsylvania Supreme Court would ultimately adopt the analysis of the Pennsylvania Superior Court on the issue in question. *Luzadder v. Despatch Oven Co.*, 651 F.Supp. 239, 244-45 (W.D. Pa. 1986). The District Court chose to adopt that analysis of *Gnall v. Illinois Water Treatment Co.*, 640 F.Supp. 815 (M.D. Pa. 1986), which supported the court's conclusion. The Court of Appeals, on the other hand, accepted two later district court decisions as being a more accurate prognostication of what the Pennsylvania Supreme Court would do. *See, fn. 2 infra.*

REASONS FOR DENYING THE WRIT

I. The Court of Appeals gave proper regard to the relevant rulings of the state before rendering its decision.

In this case, the Court of Appeals was faced with the question of whether Petitioners were to be afforded protection under Pennsylvania's Statute of Repose, 42 Pa. C.S.A. §5536. As the Pennsylvania Supreme Court has not yet spoken on the issue, the Court of Appeals was constrained to predict how that court would decide the issue.

Three decisions by this Court in 1940 held that a federal court sitting in diversity must follow the decisions of intermediate state appellate courts, in the absence of other persuasive data, when the highest court of the state has not ruled on the issue. *Fidelity Trust Co. vs. Field*, 311 U.S. 169, 179-180 (1940); *Six Companies of California v. Joint Highway District No. 13 of California*, 311 U.S. 180, 188 (1940); *West v. A.T. & T. Co.*, 311 U.S. 223, 237 (1940). This directive was later clarified in *Commissioner v. Estate of Bosch*, 387 U.S. 456 (1967), wherein the Court instructed the federal courts to apply what they find to be the state law after giving "proper regard" to relevant rulings of the courts of the State *Id.* at 465; *See Also, Bernhardt v. Polygraphic Co.*, 350 U.S. 198 (1956).

The Court of Appeals, as reflected in its opinion below,¹ acted within its authority. It gave proper regard to the relevant rulings of the intermediate state court. The court did not "freely disregard" and in fact explicitly noted the Pennsylvania Superior Court's opinions in *Catanzaro v. Wasco Products, Inc.*, 339 Pa. Super. 481, 489 A.2d 262 (1985) and *Mitchell v. United*

¹ The court's opinion is published at 834 F.2d 355 and is set forth in the appendix to Petitioners' brief at 1a.

Elevator Co., 290 Pa. Super. 476, 434 A.2d 1243 (1981). Based upon an analysis of these cases, two recent federal district court opinions,² various scholarly articles, and past Pennsylvania Supreme Court decisions,³ the Court of Appeals was compelled to find that Petitioners were not eligible for protection under §5536. The ultimate conclusion reached was that there was "other persuasive data" and that the Pennsylvania Supreme Court would rule likewise.

The decision of the Court of Appeals is fully supported by the evidence in this case. Indeed, the Superior Court cases upon which Petitioners rely do not lend themselves to reaching a different result here. *Catanzaro* and *Mitchell* are somewhat liberal pronouncements of §5536 but they do not provide absolute authority in support of Petitioners' contentions. A close reading of *Catanzaro* and *Mitchell* reveal that the products involved in those cases are similar to the oven manufactured by Despatch.⁴ Those products, a skylight (*Catanzaro*) and an elevator (*Mitchell*), are components of a building. The Petitioners' products are components of a machine.

Contrary to Petitioners' assertions, those cases did not deal squarely with component part manufacturers such as Petitioners. Under the facts as presented, the federal district court opinions, *supra* n.2, upon which the Court of Appeals relied provide the more thorough interpretation of §5536. Simply put, the decision of the Court of Appeals was the most accurate that could be made.

² It is noteworthy that these two cases, *Vasquez v. Whiting Corp.*, 660 F.Supp. 685 (E.D. Pa. 1987) and *Springman v. Wire Machinery Corp. of America*, 666 F.Supp. 66 (M.D. Pa. 1987), were handed down subsequent to the district court's opinion in the instant case. Both cases provided thorough examinations of §5536.

³ 834 F.2d at 358-360; appendix to Petitioners' brief at 8a-12a.

⁴ Despatch did not join in the Petition although the decision of the Court of Appeals was adverse to it on the same basis.

II. The issue presented is not sufficiently important to warrant a grant of review.

Prior decisions of this Court already have provided an answer to the issue presented. It is true that a federal court in ruling upon State substantive law is not free to callously disregard intermediate State appellate court rulings, *Fidelity Trust, Six Companies, West*. But that court is not bound absolutely by those rulings, *Estate of Bosch, Bernhardt*. This is especially true where those rulings do not provide direct answers to the issues presented. The court must give "proper regard" to the relevant State rulings, just as any State court would do, and predict as accurately as can be accomplished how the highest court of the State would so decide.⁵ *Estate of Bosch*. The Court of Appeals did not "freely disregard" State rulings. The court acted properly within the directives expounded by this Court.

Petitioners have not set forth a substantial or novel issue for review by this Court. Petitioners were afforded an opportunity in the court below to advance their arguments and the court gave full consideration to the issues and decided them correctly. To grant review in this case would only result in an unnecessary hardship and prejudice to Respondent and further prolong an already lengthy and burdensome litigation. The "spirit of *Erie*" has not been encroached upon and to grant the writ would serve no legitimate purpose.

⁵ Petitioners' argument that the Court of Appeals' decision results in the choice of forum being determinative of the outcome of this case is without merit. Quite to the contrary, that result certainly would occur were the federal court bound absolutely by state court decisions. See, *Wright, Law of Federal Courts*, §58, p. 374 (1983).

Conclusion

In accordance with the foregoing, Petitioners' Petition for A Writ of Certiorari should be denied.

Respectfully submitted,

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